officer who served the warrant was protected from an action, for reasons of public policy."

"But," says the Maryland court, " an act which, if done by one alone, constitutes no ground of an action on the case, cannot be made the ground of such action by alleging it to have been done by and through a conspiracy of several." Such is the law. *Saville* v. *Roberts,* 1 Ld. Raym. 374, 378; *Dowdell* v. *Carpy,* 129 Cal. 168; *Stevens* v. *Rowe,* 59 N. H. 578. But even that does not invalidate the case against the suborners. True, the allegation of a civil conspiracy means little, but its ineffectiveness is not applicable here. For the acts of those who procured the witness to swear falsely are not identical with the act of the witness on the stand. To make them liable for those acts is not obnoxious to the general rules that there can be no civil action for perjury or subornation of perjury in most cases. "The false testimony is not the sole moving factor in the cause of action. The fraudulent purpose or intent, formed before the trial, the fraudulent concoction of the scheme, are the chief bases of the cause of action. The acts of the defendant on the trial are but a part of an entire transaction." See *Verplank* v. *Van Buren,* 78 N. Y. 247, 259. The plaintiff, being defamed, has been injured; the defendants, except the witness, are entitled to no privilege. Why should they not be liable for their unlawful acts? S. W. D.

REVIEW BY THE COURTS OF THE DECISIONS OF THE LAND DEPARTMENT.—The Land Department of the United States is a quasi-judicial tribunal, invested with authority to hear and determine claims to the public lands, and created to supervise all the various steps required for the acquisition of the title of the government. Proofs as to settlement on the lands and their improvement, offered in compliance with the law, are to be presented, in the first instance, to the office of the district where the land is situated, and from its decision an appeal lies to the commissioner of the general land office, and from him to the Secretary of the Interior. It has long been the established rule that the decisions made by the Secretary of the Interior and his subordinate officers, upon questions of fact presented for their determination, in cases within their jurisdiction in the official business of the land office, and in the absence of fraud, misrepresentation, or mistake, are final and conclusive and cannot be reviewed or re-examined by the courts. It is equally well established that while the decisions of such officers are conclusive on questions of fact, it is otherwise with regard to their conclusions of law, and it may be broadly stated that the rulings of the Land Department upon questions of law are not binding upon the courts but may be reviewed in an appropriate proceeding.

The facts which may be conclusively passed upon by the land office are all such as are necessary to the issuance of a valid patent, whether relating to the character of the lands in question or to action on the part of claimants and, in the absence of fraud, imposition or mistake, its determination is conclusive against collateral attack. For specific instances see note to *Hartman* v. *Warren,* 76 Fed. 157, 22 C. C. A. 30.

JUDGE SANBORN in the recent case of *Howe* v. *Parker* (1911) 190 Fed. 738, has made distinct advances upon the former application of these general rules. In the first place, while recognizing that alleged mistakes in findings of fact cannot be inquired into by the courts, he states that if the officers of the Land Department are induced to issue a patent to the wrong party by a *gross mistake of facts proved,* the rightful claimant may in a court of equity avoid the effect of their decision and patent. In other words, that a gross mistake of fact upon the part of the land department amounts to such error as may be inquired into by the courts. And further, that the recital in the Secretary's decision that as a matter of fact certain parties received due notice of proceedings is not conclusive, but can be inquired into where a claimant alleges in the court that no notice was received.

Heretofore it has been held that erroneous rulings by the Land Office in reference to the weight of evidence, admissibility of evidence, or sufficiency of evidence in a contested case, did not constitute such a mistake of law as to be subject to review by the courts, the only remedy being by appeal from one officer to another of the Department. *Shepley* v. *Cowan,* 91 U. S. 330; *Quinby* v. *Conlan,* 104 U. S. 420. Also where there was a mixed question of law and fact to be determined by the Land Department, and the court cannot separate it so as to ascertain what the mistake of law is, the decision of the Department affirming the right of one of the contesting parties to enter is conclusive. *Marquez* v. *Frisbie,* 101 U. S. 473; *Porter* v. *Bishop,* 25 Fla. 749.

The principal case of *Howe* v. *Parker, supra,* makes another advance upon this principle. Judge SANBORN says, "Whether or not the weight of evidence in substantial conflict sustains the one or the other side of an issue of fact is a question which, in cases within his jurisdiction, the final decision of the Secretary of the Interior is conclusive in the absence of fraud or gross mistake. But whether or not there is at the close of a final trial or hearing before him *any evidence* to sustain a charge or finding of fact in support of it, is in his and in every judicial and quasi-judicial tribunal, a question of law. And an injurious error of the Secretary in finally deciding that question presents good ground for relief in equity." In other words that where the Secretary makes a finding of fact in his decision, and a claimant thereafter alleges in the court that there was no evidence whatsoever to support such finding, then there is a question of law which the court can inquire into, and it is not a question of fact, nor is the Secretary's finding conclusive.

The Secretary of the Interior has always been held bound by an established principle of law evidenced by the previous decisions of his Department, the doctrine "stare decisis" applying as well to him as to the courts, and though he undoubtedly has the power to promulgate a new rule of construction or practice, yet such new construction cannot be made retroactive so as to operate upon rights theretofore attached. It is not within the supervisory power of the Secretary to set aside or annul by a retroactive decision, rights acquired under a settled rule and practice, upon the ground that such rule or practice was either inconvenient or erroneous at the time the entry upon the land was made. *Germania Iron Co.* v. *James,* 89 Fed. 811, 817, 32 C. C. A. 348; *James* v. *Germania Iron Co.,* 107 Fed. 597 ;*Shreve* v. *Cheesman,* 69

Fed. 785, 792; *Cornelius* v. *Kessel,* 128 *U. S.* 546; *Love* v. *Flahive,* 205 U. S. 195.

The principal case, holding along these lines says, "the settled rules and practice and the uniform decisions of the department constitute both rules of law and of property, and equitable titles in entrymen cannot be destroyed by the Land Department in violation of them," but it makes an advance over the old principle in that it would seem to imply that the old rule of construction must control in the courts, irrespective of whether or not there is an attempt to make the new rule retroactive.

No principle is more firmly established in American jurisprudence than that, after the title has passed from the United States to a private party, it is the province of the courts to correct the errors of the officers of the Land Department which have resulted from fraud, mistake or erroneous views of the law, to declare the legal title to lands involved to be held in trust for those who have the better right to them. The power of the Secretary should not be an arbitrary, unlimited or discretionary one, but should be exercised according to law and not in disregard of it. The advances brought out in the principal case are clearly justified and if followed will most certainly tend to a better administration of justice in regard to titles to land in the United States. N. K. F.

RIGHT OF ONE PARTNER TO SUE HIS CO-PARTNER IN CONVERSION.—Although the settlement of the affairs of a partnership is generally left to a court of equity, there are certain well defined exceptions to the rule. By the better opinion a partner may sue at law in contract when a final balance has been struck and the suit will result in the final determination of the rights of the partners. But the rule in tort is much more uncertain. Whether or not a partner may sell all the property of the firm without liability to his copartner for conversion has been an open question. The recent case of *Weiss* v. *Weiss* decided in the New York Supreme Court and reported in 133 N. Y. Supp. 1021 decides that an action at law will lie in such case. The facts of the case were that the plaintiff and the defendant were copartners, owning property as such. Defendant Weiss transferred to another all the property of the partnership without the knowledge, consent or authority of the plaintiff. On demurrer it was held (HOTCHKISS, J., dissenting) that the complaint stated a good cause of action for conversion.

It does not appear from the report of the case whether the partnership was a trading or non-trading firm. If the former, the decision is open to criticism. In *Fox* v. *Hanbury,* 2 Cowp. 455, LORD MANSFIELD held that each partner has a power singly to dispose of the whole of the partnership effects. This may be done even if it terminates the partnership. "The right of each partner to sell, assign or transfer any part or the whole of the partnership property, in the way of the regular business of the partnership, is absolute and unquestioned; this however must be done in the regular course of business of the firm, for outside of this he has no power." PARSONS, PARTNERSHIP, Ed. 3, 163. The following cases support the rule laid down in *Fox* v. *Han-*